

Comment on FCC Proceeding 92-25

“We also impose an immediate freeze on the filing of translator “move-in” modification applications and direct the Bureau to dismiss any such application filed after the adoption of this *Third Further Notice*. This freeze shall continue until the close of the LPFM window.”

I am the owner El Sol Broadcasting, LLC, (‘El Sol’) which is Licensee of stand-alone AM radio station WJTI (#68759) in West Allis, Wisconsin, which community is in the Milwaukee, WI urbanized area. For the previous 18 months I have been working to bring an FM translator to Milwaukee, pursuant to the existing FM Translator rules, to retransmit my AM signal. The proposed Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations and the freeze now being implemented will have a disastrous effect on my plans and future. Moreover, they will likely restrict AM stations in all parts of the country from being able to implement FM Translator stations to retransmit AM broadcast signals.

Under the existing FM translator rules pertaining to use of FM Translators by AM broadcasters, and due to the very limited number of licensed translators available for use in retransmitting AM signals, many AM broadcasters have sought translators in surrounding areas to use, and have filed or caused to be filed modification applications to relocate those FM Translators to make them feasible for AM retransmission use. In many cases it becomes a lengthy process, such minor modifications involve not only expensive relocation, but also changes in frequency to avoid interference to existing stations, permits and prior-filed applications in the move-in market. In Milwaukee, only two FM Translators are licensed, the fewest number in the top 100 markets and neither was available for use in retransmitting the signal of WJTI.

The translator that I purchased is now currently located a few miles outside the designated Abitron market boundary lines. Under the currently imposed freeze moving the translator closer to Milwaukee would be categorized as a move-in and the minor modification application will now not be accepted. The rules that I had been following were changed without warning and now my translator will not be allowed to move close enough to retransmit my AM signal. There is no backup plan or alternative. Waiting until the LPFM process is completed is not a viable option as it is highly unlikely that any channel will be left over to which to move. When I began my efforts to find a translator for my AM station there was not a hint that the newly approved FM translator rules would change so quickly and so significantly and that the time period available to move my FM translator station close enough for feasible use would be open for such a short time. In addition shortly after the rules were implemented 90 day holds were placed on each filing that further lengthened the process. The current freeze imposes a death blow to my efforts that was unforeseeable and unfair.

In this regard, it is unfortunate that the story of one broadcaster’s abuse of the translator process has become a brush to unfairly taint all of us. The majority of AM broadcasters who were able to find translators have done so, and have legally relocated FM translators in order to use them to retransmit AM stations. The fear that such abuse will grow in the future, with all due respect is unfounded, as there is no evidence that a second wave of AM broadcasters interested in moving FM Translators lie in waiting.

If the FCC's new rules are adopted, and even if the restriction on use of FM Translators licensed since May 1, 2009 is lifted, it is almost guaranteed that no spectrum space would be available for El Sol's use for retransmission of its AM signal, since it can be expected that all available channels would be taken in the proposed LPFM window.

Applications for modifications that create a move-in situation should not be completely prohibited. Changes in the proposed rules or waivers of the rules should be allowed for filing and processing of these applications in cases such as that of the Milwaukee WI area. This action would allow processing of these final FM translator modification applications for AM broadcast use prior to the LPFM window. At the very least a period of time should be provided to allow AM broadcasters currently moving FM Translator' to finish what they had started under the rules that were in effect.

While I support the dismissal of pending 2003 Translator applications, the proposed LPFM channel floors if implemented as is will result in an **imbalance** in the LPFM – FM Translator mix in the Milwaukee urbanized particular area – there would be many more LPFM stations than FM Translator stations. In view of the fact that Milwaukee has 7 existing NCE-FM stations, this is clearly an inequitable solution, at least in this market. And as already noted it would prevent AM broadcasters in this market from potential use of FM translators to provide needed AM service. Such imbalances should be taken into consideration as well as the "needs of the Community" as stated in section 5 of the LCRA. In certain markets where imbalance is found processing of move-in modification application should be allowed. This would ensure the balance and protect the equal status that the two services require; this is a last opportunity for AM radio before the FM spectrum is full.

The rules allowing the use of FM translators by AM radio stations have been acknowledged as a great success and the public has benefited greatly from new service that was not previously available. My station serves a growing Hispanic community which would benefit significantly from an improved service. The unfortunate reality is that this door that was so recently open is closing for the vast majority of AM broadcasters and that the lifeline that was extended to help AM broadcasters is being withdrawn without concern for those that were holding on.

Broadcasters take great risks when investing hundreds of thousands of dollars in radio licenses. I have committed tens of thousands of dollars and nearly two years in the effort to locate, purchase, and move an FM translator to retransmit WJTI's signal in Milwaukee, and the waste of such effort and expenditure is very dispiriting and financially catastrophic. Small AM broadcasters are willing to compete, even against bigger outfits, but the change in the rules in the middle of the game undermines regulatory stability, and contributes to the evisceration of the service. Without some type of change in the proposed rules its "game over" for many AM Broadcasters including myself.

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